CONSUMER PROTECTION and GOVERNMENT OPERATIONS
of the
SUFFOLK COUNTY LEGISLATURE

Minutes

A regular meeting of the Consumer Protection and Government Operation Committee of the Suffolk County Legislature was held in the Rose Y. Caracappa Legislative Auditorium of the William H. Rogers Legislature Building, Veterans Memorial Highway, Smithtown, New York, on Thursday, **June 5, 2003**.

MEMBERS PRESENT:
Legislator Cameron Alden - Chairman
Legislator William Lindsay - Vice-Chair
Legislator Lynne Nowick
Legislator Angie Carpenter

ALSO PRESENT:
Paul Sabatino - Counsel to the Legislature
Ed Hogan - Aide to Legislator Nowick
Warren Green - Aide to Legislator Alden
Meghan O'Reilly - Aide to Presiding Officer Postal
Charles Gardner - Director of Consumer Affairs
Alexandra Sullivan - Deputy Clerk of the Legislature
Kevin Rooney - Oil Heat Institute of Long Island

MINUTES TAKEN BY:
Donna Catalano - Court Stenographer

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(*THE MEETING WAS CALLED TO ORDER AT 9:38 A.M.*)

CHAIRMAN ALDEN:
Okay. Good morning and welcome to the Consumer Protection Committee Meeting. And I think we'll get started and do the Pledge and have Bill Lindsay led us the Pledge.

SALUTATION

CHAIRMAN ALDEN:
Okay. I think what we're going to do is we have a presentation from Kevin Rooney from the Oil Heat Institute of Long Island. Good

morning, Kevin. Let's bring you up. Kevin distributed these are very nicely bound reports. Kevin, do you want to do you report and then -- because I have a couple of questions I'd like to ask you, so which ever way you're more comfortable with it. You want me to start off with questions?

MR. ROONEY:
No. Maybe you could hold them until after. Some of them might be answered.

CHAIRMAN ALDEN:
Okay.

MR. ROONEY:
For the record, my name is Kevin Rooney. I am the Chief Executive Officer of the Oil Heat Institute of Long Island. The institute is a not-for-profit trade association representing the heating oil industry throughout Nassau and Suffolk Counties. Mr. Chairman, members of the committee, thank you for the invitation to appear before you today to discuss the events of this most recent winter and the impact which it had on energy consumers throughout the region. To determine this impact we need to review three basic elements. One, total heating degree days and the impact on average homeowner consumption. Two, product inventories. And three, commodity product prices. This was a harsh winter and somewhat unusual, not only it terms of its severity, but also for it's duration.

At times and well even into the spring, it clearly appeared to be the winter that didn't want to end. By definition, seasonal industries, such as heating fuel suppliers are supposed to be seasonal. These industries and the infrastructure which supports them are not designed to become for semi permanent for extended periods of time. If I could refer you to Appendix One for a moment, you will note the following: Total degree days for the winter of 2002-2003 total 5725. Total degree days for the previous winter, 2001-2 totaled 4533. Total degree days normal were 5643. Thus while this past winter was only some 2% colder than normal, and normal is based on a 50 plus year average, it was a whopping 27% colder than the winter of 2001-2002. On a month by month basis, this past winter started out cold and simply stayed that way up to and including April what average temperatures were significantly below the previous year.

Although this winter may have seemed particularly harsh and cold, that is only because we all have short an selective memories of the past.

Appendix Two it a tabulation of heating degree days as recorded at Brookhaven National Laboratory since 1949. Even a cursory review of the data shows that there are at least 30 years since that date which have been considerably colder than that winter. This year was really only cold relative to four of the past five years, which were considerably warmer than normal. As a direct result, energy consumption, the first part of the total equation, was also up significantly this winter compared to those of recent memory. Based on the increase in degree days, we estimate that the average oil heated home consumed approximately 250 gallons more this winter than last.

Physical inventories of distillate products are the second part of the equation, and these are shown on Appendix Three. We began the heating season after Labor Day with available inventories of home heating oil about 25% higher than the previous year. The inventory levels went negative by early November and remained significantly negative through the end of April. In fact, for the first four months of this year, inventories averaged 39% lower than the previous year. There are many reasons for these low inventory levels virtually all of which are based on sound business practices. The refining and terminaling sectors of the petroleum industry have consistently and consciously moved away from maintaining high inventories over the course of the past decade. As demand for specific petroleum products increases or decreases refinery production and output is adjusted commensurately. By and large, just in time inventory programs work very well to supply products as needed to the market while minimizing the financial risk inherent in holding large inventories of products such as heating oil, which is subject to a high degree of demand volatility. Suffice it to say, that the major refiners and wholesale suppliers do not ever want to find themselves holding excess and oftentimes high priced product in the event of a dramatic change of market fundamentals, be it weather or supply related. Such an event is a recipe for financial disaster.

The third element of the equation is prices. The interwoven relationship between the cost of a barrel of crude oil on both national and international markets, the wholesale price offered by numerous suppliers at numerous city and island based terminals and the consumer price charged by a large number of competing retailers is extremely complex. The role of the Mercantile Exchange or Futures Market adds not only to the complexity of the physical product's relationship, but also in the volatility of commodity prices. As a general rule of thumb in energy markets, supply uncertainty and instability are the precursors of price volatility. In retrospect, this heating season was a real doozey.

There were six main elements which at various levels contributed to this supply uncertainty, instability and ultimately price volatility. Before enumerating them, I should note that oil is a fungible commodity in that amongst all of the players which comprise the international energy community, it is a readily traded and replaceable. A surplus or a shortage anywhere is a surplus or a shortage everywhere. In this age of instantaneous communication and interrelated financial and commodities markets, a problem of any sort in Abu Dhabi, Port Arthur, Texas is immediately reflected on both the

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Rotterdam and New York spot markets. So just what the did the oil markets experience this winter?

First, the continued threat of terrorist actions directed toward the United States, its allies and trading partners, particularly those this in the Gulf Region. Second, the long and oftentimes tortuous build up to the war with Iraq with all of its inherent possibilities for major disruptions of world crude oil supplies. Third, a crippling and prolonged general strike in Venezuela, a major supplier to the Eastern United States, which effectively removed four to five million barrels a day from the world market. Fourth, a strike by Nigerian oil field workers, which while relatively short in duration, nonetheless further jolted international markets. Fifth, frequent and extended natural gas supply interruptions throughout the New York and Tri-State regions which forced large volume dual fuel users into the heating oil markets during periods of otherwise high demand. And sixth, inclement weather, that is high winds and seas that made barge navigation in both the Port of New York and the Long Island Sound particularly hazardous at key point throughout the heating season.

Each of these events when taking together and combined with a winter much colder than those of the recent pasts, conspired to dramatically raise crude, wholesale and retail prices well above year ago levels. For example, crude prices rose from a low of $18 a barrel in January 2002, to a high of $39 a barrel by March of 2003, an increase of almost 117%. Retail heating oil prices also rose, but certainly not by the same magnitude. As Appendix Four details, retail full service oil prices increased 59.8 cents a gallon from their low point in September to their peak in early March. However, it should be noted that for the entire heating season, average retail prices were only about 20% higher than last year. Furthermore, the prices quoted in the NYSERDA survey do not reflect the very sizable number of homeowners who purchased their heating oil on a COD basis or under a fixed, capped or otherwise price stabilized program from a full service company. For those customers, the price escalation an overall cost impact was substantially less. It should also be noted that an era deregulated energy commodity costs, those homeowners using national gas to heat their homes were not immune from the supply shortages and price escalation which negatively impacted gas markets.

As shown on Appendix Five, the price of home heating oil and the price of natural gas follow each other very closely. In fact, the per therm cost of gas for home heating increased by almost 26% this past season. Notwithstanding the contention of our friend at KeySpan, the fact is that natural gas is clearly has not enjoyed a consistent price advantage over oil for most of the past four or five years. In summary and in retrospect, this winter was for a change winter. The weather really wasn't as bad as it may have seemed at the time. And the overall cost impact on most homeowners while more than anyone wants to pay, was nonetheless largely manageable. Thank you for your time and attention. And I would be pleased to answer any questions which the committee may have.

CHAIRMAN ALDEN:
Actually, a couple of ones that I had written down to ask you, you kind of have answered. And one of those was just, you know, it

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appeared to be colder than normal, but when you put it in perspective, we did enjoy three years that were basically no winters. So now if you do have a winter, then everything seems like it's just such a disaster and so cold. But thinking back, you know, I can remember even in the '50s and the '60s where, you know, we had winter here.

Aside from that, you did touch a little bit on bad weather and the ability for barges to get in, but some of our constituents and including some people that are local fuel oil companies, because there's a lot of small ones in my district especially, but they heard that the Holtsville terminal was closed a number of times. Is that because of the barges not being able to come in? And is there some kind of plan for next year to mitigate that kind of thing?

MR. ROONEY:
The terminal in Holtsville is one of the major supply terminal to Long Island. Most people don't realize, if they even know where the terminal, just south od the Expressway in Holtsville, that terminal is supplied by barges, which come into Port Jeff Harbor, off-load their product, that product is then transferred by pipeline through a switching station in Setauket, from Setauket south to Holtsville. And then, in turn, Holtsville supplies by pipeline the terminal in Plainview right at Sunnyside Boulevard. So those two terminals, Plainview and Holtsville, are not only key terminals, but they're also terminals that are subject to certain weather variables. Throughout most the season, they didn't have a problem, what I would consider a serious problem at Holtsville.

However, in April, there was a period of about two and a half to three days when Holtsville was essentially out of number two fuel oil. They did have supplies of gasoline, the did have supplies if diesel fuel. But in terms of number two fuel oil, ther were out. And the reason for that, Mr. Chairman, if you are a boater if you're even somewhat familiar with -- if you have ever taken the ferry over to Bridgeport, for example, you come out of Port Jeff Harbor, you're heading north, Conscience Bay is on the left, and you come out through the break water, and there are these stone jetties that go all the way out in the Sound, and they serve as a break water to the harbor entrance. That is not actually a straight shot. It may seem it when you are on the ferry, but if you were to actually to look at it on a map, it kind of comes our at a 45 degree angle. And it's designed that way so that you don't straight line coming in, which keeps Port Jeff Harbor relatively calm. What it does, however, it makes it very difficult for certain types of vessels coming into the harbor.

When you get a barge, let's say a {Boushard} barge, the Delaware, the Delaware is a 100,000 barrel barge. That's carrying 4.2 million gallons of product. When that barge comes in out of the Sound and into Port Jeff Harbor, it does not come in under its own power. Barges are designed -- this is probably more than you ever wanted to know -- barges are designed so that a tug boat actually snugs up behind them, there's a notch in the back of the barge. And tug boat snugs up and is locked into the stern of the barge, and that tug boat then pushes the barge into its anchorage. When you have situations where you have wind out of the northwest at 15 to 20 miles per hour, which means you are going to have six to eight foot seas in the Sound,

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the ability of that barge with a tug boat behind it coming in and making the turn -- making the turn to the west and then to the east to get in through the break water and into Port Jeff Harbor, when you have winds of that magnitude and that direction, the tug boat is not able to control the bow of the boat. And it's not cost effective to have two tug boats.

CHAIRMAN ALDEN:
I have a friend of mine that worked for {Mac Allister} Towing.

MR. ROONEY:
So when you have those conditions, generally speaking, there's sort of a general unwritten rule that the major transporters, {Bushard Mac Allister} have worked out with the Coast Guard, and they stand off. And if it's really bad, they will go over to New Haven. We did have a period of three days where {Conacoe}, which now currently owns the terminal was unable to bring in any barges into Port Jeff. As a result, heating oil was cut off at Holtsville and subsequently at Plainview. That was the only time that the terminal, the main terminal in Holtsville, closed down for any extended period loner than a few hours, but that was the reason for it.

CHAIRMAN ALDEN:
Do they get deliveries everyday, and how many day's supply do they actually keep at the terminal?

MR. ROONEY:
They normally keep about four to five day's supply. But generally speaking, what happens -- and this winter was so bizarre, normally by about the middle of April, early to middle of April, the amount of heating oil that they keep on hand at Holtsville, and they keep in inventories throughout the Tri-State Region, begins to drop off. Refinery production of heating oil usually drops off by mid to late March and so inventories begin to drop off early to mid April. Because normally, by the middle of April we're coming out of the heating season.

CHAIRMAN ALDEN:
I think we're still in the heating season.

MR. ROONEY:
Yes. We're still -- believe it or not, people are still using heating oil. It snowed in April. And we've had some really cold weather, the end of April and even well into May. As a result of that, the inventory that they normally would have had in Holtsville, which is four to five days, at that time were probably down to about a day and a half to two days. So, you know, it's a combination of things that -- that happen. And in fact, heating oil supplies at the end of April were very, very tight and refineries, the big refinery, {Tosco} Refinery in Linden, New Jersey, actually switched over. You know, they have a crack -- what is called a crack spread of, you know, gasoline, diesel fuel, heating oil, jet fuel. They actually changed their crack spread around about the end of April to produce more heating oil, because demand was re running very, very high.

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CHAIRMAN ALDEN:
Question from Legislator Nowick.

LEG. NOWICK:
Thank you for your presentation, it was excellent. I just have a few questions. The first question is, and I've heard this term forever, from the days of Uncle Wetherbee, and I just dated myself, didn't I? Degree days, for dummies, could you tell me what that means?

MR. ROONEY:
Oh, sure. A degree day is a simple calculation.

CHAIRMAN ALDEN:
Doesn't that -- that stems from the'30s, tough, right?

LEG. NOWICK:
Not exactly.

MR. ROONEY:
It goes back to the late 1800s actually.

CHAIRMAN ALDEN:
No, '80s and '90s.

MR. ROONEY:
The fact that even I know who Mr. Wetherbee, we're all dating ourselves.

LEG. NOWICK:
So does Cameron.

CHAIRMAN ALDEN:
No. I heard my grandpa talk about him a little bit.

LEG. LINDSAY:
Your nose is going to grow.

MR. ROONEY:
The mean temperature from the day subtracted from 65 degrees farenheit produces a number of heating degree days. So if the mean temperature, the high is 40 and low it 30, the mean temperature is 35. On that day you accumulated 30 degree days. So it's 65 degrees farenheit minus the mean temperature for the day equals the number of heating degree days. By the same token, by the same token -- and in fact, you can look up in Newsday, the run it in the weather page everyday, and that's based on the numbers out of Brookhaven. Or the New York Times, also does it on its weather page, and that's recorded at Central Park. But as of May 1, they actually switch over from regarding heating degree days to recording cooling degree days. And cooling degree days is the same thing. The mean temperature for that day, let's say 90 degrees, minus 65, you would have 25 cooling degree days.

LEG. NOWICK:
So in May, we're in negative cooling degree days.

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MR. ROONEY:
In actuality, and I did have the conversation with the fellow out of Brookhaven who does all of the recording, and he said, we normally stop recording heating degree days in May, and we've actually had to go back to recording them.

LEG. NOWICK:
I would believe that. All right.

MR. ROONEY:
So it's 65 degree as the standard, and it's mean temperature below or above.

LEG. NOWICK:
Okay. The other question is the strike in Venezuela, is that over?

MR. ROONEY:
Yes.

LEG. NOWICK:
Okay.

MR. ROONEY:
If I could just add, I did mention it in passing, Venezuela not only supplies four and a half to five million barrels of oil a day to the world market, about 70 to 75% of that comes in the Eastern United States and most of it is refined in the Caribbean and most of it end up as distillate product. Now, a distillate product, just so that you know the definition, gasoline is gasoline based on its flash point and distillate products are differ, again, based on a different flash point. Kerosene is number one fuel oil, that's jet fuel. Diesel fuel is number two fuel oil, with a higher cetane level. And then there's number two oil, home heating oil, number four oil and residual oil. Residual oil is heavy oil burned in power plants, four oil is a combination of two oil and six oil usually burned in large apartment buildings. But all of those, jet, kero, diesel, number two, number four and residual fuel are all considered distillate product. So 75% of the Venezuelan output comes to the Eastern United States, and the vast majority of that is distillate product. So one of the reasons where the airlines had so many cost overruns and ran into so many financial problems is that most of them buy their jet fuel from Venezuelan product. And they had to buy their jet fuel off the Rotterdam spot market and have it refined in Europe and shipped over here.

LEG. NOWICK:
With that in mind, do you see future prices going down within the next year? Can you tell? Is that something that you can --

MR. ROONEY:
I actually just this morning included in the back of your little binder that you have, there is a yellow page, and it says, "New York Mercantile Exchange closing price data for crude, oil heating, natural gas, June 4th." What that actually shows is that, if you look at the first page, if you wouldn't mind, down toward the bottom of the page, heating oil 9XHO. Those are the -- the open and closing prices for

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heating oil in the future's market. And you can see that it's kind of hovering around the 75 to 76 cent a gallon range. What that tells me is that if you were a retail distributor and you are buying contracts now for -- for September, October, November, you are looking at a future's contract of something on the order of 75 cents a gallon. It's normally about five cents a gallon deliver in, so that's 80. The average heating oil company, full service company, works off about a 60 cent margin. So you are looking at heating oil prices averaging about a $1.40 right now.

LEG. NOWICK:
That's for the average full service.

MR. ROONEY:
Right. That's a full service. That's a full service price.

LEG. NOWICK:
COD companies.

MR. ROONEY:
Cod companies operate usually on about a 20 to 25 cent margin as opposed to a full service company. Because they are simply selling a commodity on a cash and delivery basis. So realistically as much as we would like, very much like, to see prices lower than they were this year, it doesn't look as if that is in the cards at this point in time. Hopefully, we won't get the escalation that we saw this year.

The thing to bear in mind is that heating oil, the price of heating oil is directly related to the wholesale price of titillate products and directly to crude oil. Crude oil yesterday closed -- Brent Crude, which is British, closed at 26 -- twenty-six eighty. Light Sweet Crude, which is either Saudi crude or West Texas Intermediate closed for July at $30.05 and for October at twenty-seven fifty-four. It's down significantly below the $39 a barrel range earlier this year, but a lot of energy analysts attribute at least eight to $10 a barrel at the price run up to what was called essentially the Iraqi War premium. Traders on the Mercantile Exchange who deal millions and millions of barrels of oil a day basically had added a premium to the spot price in expectation of something going on.

You know, when the war began, what would happen to crude prices? And their historical marker, if you will, to put in some kind to perspective, prior to Gulf War One, the price of crude oil stood at around $25 dollars a barrel. In the first 24 hours of the onset of the Gulf War, the price of crude oil went to $54 a barrel. Twenty-four hours later, it dropped to $27 a barrel. Now, if you were a trader on the Mercantile Exchange, and the first day of Gulf War

One, you bought contracts, each contracts is a thousand barrels, if you bought a contract for a thousand barrels at $54 a barrel and a day later it dropped to $27 a barrel, not only you as a trader would have lost your job, the company you worked for would have lost its shirt. And so what happened, based on that and the fact that last time around the commodities traders really got burned, this year they built a premium in ahead of time and then basically hedged their bets.

So once the second Gulf War, Iraq War, was over we saw crude oil

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prices drop down from the $39 high to around 27, $28 dollars. Now they're hovering in the $30 a barrel range. That's good, because longer term, the market basket price of both US product that is from Texas, Louisiana, Oklahoma, Kansas, Alaska, Florida, as well as the OPEC price and then the non affiliated, Norway, Great Britain, Nigeria, they would like to be and we would like to be in the 25 to $30 a barrel range. That's a stable price, it's a good replacement price to allow producers to keep producing at that level. If it goes too high, it's not good for the economy. If it goes too low, it's not good for the producers. So you really want a stable price around 25 to 30. If we end up with crude oil prices in that range of 25 to 30, then I think we'll see stable oil prices in the $1.40 to the $1.50 range.

CHAIRMAN ALDEN:
Where's the inside information to tell us whether to buy or sell this stuff? Oh, wait a minute, with Martha Stewart, I shouldn't say anything.

MR. ROONEY:
With all due respect, Mr. Chairman, if I knew that, I probably wouldn't be sitting here today. I'd be playing golf somewhere warm and dry.

CHAIRMAN ALDEN:
I have one more question on -- you mentioned about the interruptible gas. Over the past couple of years, we've talked about that a few times. Does that seem to be a real bad impact when somebody's using gas and then they get interrupted and have to go back to their oil supply?

MR. ROONEY:
Yeah, it is. And it's something that we as an industry are working with the State Energy Office, NYSERDA and the Public Service Commission and the utilities to try to address this problem. What's happened over the course of the last decade or so is that the gas utilities in the Tri-State area have added more and more and more

large volume customers. These are schools, hospitals, government buildings, nursing homes, you name it.

CHAIRMAN ALDEN:
Malls.

MR. ROONEY:
On an interruptible basis. They do this because it makes good business sense for a utility company. I used to work for Long Island Lighting Company for many, many years as their Director of Public Affairs. It makes a lot of sense -- good business sense for a utility to do that, because at certain times of the year they have excess gas capacity in their pipelines, they need to sell that gas in order to keep up the pressure on their pipelines. And so they go to these large volume customers and the say, look, if you buy gas from us, we will basically sell you that gas at our base cost, which is really cheap, it's a dump price, on the condition that we will be able to interrupt you when demand for gas increases from our firm load. Firm is residential and small commercial. So as the demand for gas goes up

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in the firm market because of colder weather this winter, and then gas supplies are drawn down or availability through the pipeline, they begin cutting off their interruptible customers.

These interruptible customers have also gone from being what are called temperature controlled. That is when the temperature drops below 32 degrees, they would automatically go up to being what is going called demand interruptible. They can be interrupted on two hours notice from the utility company. If all of the 607 interruptible customers on Long Island went off at the same, time, which is what they do, the daily increase in demand for heating oil is about 1.2 million gallons a day. That is about a 25 to 30% increase in demand, literally like that. And given the fact that available supplies throughout the entire Long Island region of heating oil usually only run on a four to five day basis, essentially what you've done is by increasing demand by about 25% instantly, you have dropped your available supply down quite dramatically.

What the Commission did a number of years ago, two years ago, after the winter of 2000, was they required that all interruptible customers by November 1, either have a ten day's supply on hand, if they have an alternate fuel supplier, or under contract. Realistically, under contract is, you know, about as worthless as this, it's a piece of paper. But the companies and the hospitals and government buildings that do have alternate fuel storage tanks have to have them filled by November 1. That has helped.

And the first time that they were interrupted in January, it helped a great deal, because you didn't get that instantaneous spike in demand, because these customer began using their own oil supplies. The problem was that after the gas interruption was over, and it lasted about seven days, very few of them refilled their on-site supplies. The second interruption came in February, and that had much greater impact. The third interruption, which was for around six and a half days, came in early March and that had a serious impact.

CHAIRMAN ALDEN:
Kevin, on that spike, though, when you say an impact, it has an impact on supplies, but also --

MR. ROONEY:
Prices.

CHAIRMAN ALDEN:
Prices. So the bottom line is that the residential customer is going to pay more because you've got this huge demand. Okay.

MR. ROONEY:
You're absolutely right. Any time you get a 25 to 30% spike in demand overnight, that's going to draw down supplies, that sends a signal to the market that supplies may not be sufficient to meet demand. That's going to have increase -- an impact, and it increases prices. So residential heating oil customers end up paying more money basically to subsidize large volume interruptible gas customers who have the benefits of cheap gas when it's availability and oil when it's not.

CHAIRMAN ALDEN:
Okay. I think now is the time that we should start talking to KeySpan, maybe have you come back if you're available and try to work something out during the summer time so that we don't end up, you know, causing -- especially to residential customers to have that kind of spike in the middle of a cold season. Thanks, Kevin. Legislator Nowick.

LEG. NOWICK:
Is there any way to enforce -- the gas customers to enforce that contract to have a back up oil? You said they used it up and they never replenished it.

MR. ROONEY:
Right. The Commission actually -- I heard yesterday, because in anticipation of this, I made a number of calls, we understand that the Public Service Commission will be initiating a proceeding some time in July to address the interruptible issue and what changes they may need

to make to their existing tariff. That's something that obviously we, NYSERDA, and the utilities will be very heavily involved in. And I will keep the commission -- keep the committee apprised of what's going on there. The one thing that actually may help us from an oil supply standpoint for this coming heating season, Northville Industries, which owns the terminals in Holtsville, Plainview, the pipeline system in Port Jeff and had leased those to first {Toscoe}, which was acquired by {Phillip 66}, which was subsequently acquired by {Conocoe}. They have been notified by {Conocoe} that as of October 1st, {Conocoe}, which is a major gasoline supplier, national and international, will not be renewing that lease. So effective October 1, Northville Industries will be back in the wholesale distillate market. Northville Industries is a local company, it is run by Jay and Jean Bernstein, many people know Jean, particularly. It's a Long Island company. They know the Long Island market far far better than {Cococoe} does. And {Conocoe} has actually had all kinds of problems in the last year. So we're hopeful that with Northville getting back into the Long Island Petroleum market they -- that will certainly help the situation, you know, next year.

LEG. NOWICK:
Good.

CHAIRMAN ALDEN:
Thank you. Thanks a lot.

MR. ROONEY:
Thank you very much.

TABLED RESOLUTIONS

CHAIRMAN ALDEN:
I think we're going to go right into the agenda. And we have three tabled resolutions.

(P) 1227-2003. Adopting Local Law No. -2003, to establish a County website page for retail store violations of item pricing law. (CARPENTER)

LEG. CARPENTER:
Motion to approve.

CHAIRMAN ALDEN:
Motion to approve, second. All in favor? Opposed? That's APPROVED. (VOTE:4-0-0-0)

(P) 1242-2003. Adopting Local Law No, -2003, A Local Law to toughen and graduate fines for item pricing violations within Suffolk County. (ALDEN)

CHAIRMAN ALDEN:
I'm going to make a motion to table that one more cycle, seconded by Legislator Nowick. Any other discussion on it? All in favor? Opposed? 1242 stands TABLED (VOTE:4-0-0-0)

(P) 1347-2003. Adopting Local Law No. -2003, a Local Law updating regulations for precious metal exchanges and dealers in secondhand articles. (CARPENTER)

CHAIRMAN ALDEN:
Legislator Carpenter.

LEG. CARPENTER:
I would like to make a motion to approve.

LEG. NOWICK:
Second.

CHAIRMAN ALDEN:
Seconded by Legislator Lindsay. We have a motion, we have a second. All in those favor? Opposed? We have 1347 APPROVED. (VOTE:4-0-0-0)

I don't think we have anything else, but anybody who wants to leave, I just have a couple of questions of Charlie. Charlie, this was sent to me by one of my constituents. It's a photocopy of an article that was in Newsday about, "Dad, Son Plead Guilty to Gas, Electricity Theft, a Farmingdale father and son accused of rigging pipes and tampering with meters to steal gas and electricity entered guilty pleas and agreed to pay restitution of $115,000 to Long Island Power Authority." Charles Rumpf and Kenneth Rumpf, I believe they are they are licensed to do business in Suffolk County. They have United Air Conditioning and Heating and Island Fuel Distributors of Bethpage.

DIRECTOR GARDNER:
Off the top --

CHAIRMAN ALDEN:
I could give you a copy of that, and just if you could look into it, because the constituent told me that they actually did work on his house. And he had some kind of complaint process that he went through with you and that, you know, he would like us to look into it.

Because if they're licensed and they just plead guilty to these major felonies, I think that, you know, maybe we should know about that. Is there anything that you can think of that we should be aware of in Consumer Affairs?

DIRECTOR GARDNER:
The last two weeks, we've been very busy with implementing two different local laws, one of which was the Ephedrine Law. We have visited, just in the last week, we've distributed almost a thousand notices just letting people who might be selling any of these products know that the law is now in effect.

CHAIRMAN ALDEN:
Legislator Lindsay.

LEG. LINDSAY:
Charlie, I thought Health was going to enforce that. How did you wind up with it?

DIRECTOR GARDNER:
So did we, but.

LEG. LINDSAY:
Am I wrong?

DIRECTOR GARDNER:
Apparently, the reason that we didn't get very much involved with it from the get go is that there was no mention of enforcement in that and there still isn't any mention of enforcement in the law. It sets out a penalty structure in that there's a warning for a first offense, and then it increases up to $5000 fine.

CHAIRMAN ALDEN:
It doesn't say from who, though, the warning?

DIRECTOR GARDNER:
No.

CHAIRMAN ALDEN:
Not the Department of Health, not Consumer --

DIRECTOR GARDNER:
No. It references no County agency. So in other words naturally when we were asked for comments, our comments were it doesn't address us, so we really don't have any comments. And it went back and forth between Health -- anyway, it turns out that there was a decision by Counsel that when you have such a law where the enforcement is silent, the County Executive's Office basically has to decide. So between the County Exec's Office and our office and the Health Department, you know, I had several conversations with Dr. Mermelstein. We initiated the notification to everybody, and there are letters going to the

District Attorney requesting that there is a representative in that office that will work with our office, because you have to understand, the penalty is a misdemeanor. So nobody in the Health Department nor in Consumer Affairs can enforce misdemeanors. You know, that's a criminal offense. So we are waiting now to hear from the District

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Attorney's Office who in that office would work with us so that upon -- you know, we can take care of the first offense. That's just a warning. We can say, okay, you are selling this stuff, you're not supposed to be and here's your warning. We'll have whatever forms are required made up. But if the retailer continues to sell it, it then becomes -- it escalates to a misdemeanor. So now we need somebody from the DA's Office. So that's where we are on that right now.

LEG. LINDSAY:
So you will be the enforcement office?

DIRECTOR GARDNER:
Yes.

CHAIRMAN ALDEN:
What he's doing is he's sending out a notice, the DA 's Office is actually going to enforce it.

LEG. LINDSAY:
Well, the reason for my question is a very serious one. I've contacted the Health Department for clarification on the implementation of the legislation, and I've never gotten an answer yet. So I mean, they assumed, at least who I talked to over there assumed that they we're going to enforce it. Is this a recent development?

DIRECTOR GARDNER:
This all, I would say, was within the last three weeks it all coalesced.

LEG. LINDSAY:
Okay. Then let me throw some questions to you about the implementation. Unfortunately, my district has a number of drug manufacturers, distributors, MBTY, Twinlab, Wagner, is all located in my district. Some of them have contacted me about some really basic questions, which I thought I had the answer to, but I passed it onto Health and haven't gotten an answer. Number one, you can continue to manufacture products with Ephedra in Suffolk County?

DIRECTOR GARDNER:

Manufacture, yes.

LEG. LINDSAY:
Okay. Can -- can you ship Ephedra products into the County, repackage it and ship them out?

DIRECTOR GARDNER:
I would say yes.

LEG. LINDSAY:
I think -- I think there was a few more, but if I know you're going to handle the implementation, I'll forward the questions to you.

DIRECTOR GARDNER:
Thank you.

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LEG. LINDSAY:
Because I haven't gotten a reply from Health. I mean, these are legitimate businesses, they don't want to violate the law, and they're asking questions before that fact, which I think is the right thing to do. And they're frustrated because they can't get answers.

DIRECTOR GARDNER:
Now, I have been -- I've taken probably -- I have to say the reaction hasn't been so much that we've been overwhelmed. I mean, just for the Ephedrine notice with the number of inspectors that we use to deliver the notice, we figured it out just yesterday, it came out to about almost two months of work in the man hour times. So -- but we did it, got it out there and got finished. I'm fielding questions based on the interpretation of the law and how it will be enforced. Questions that start getting into, what do you mean by explicit approval by the FDA, how do I show that, what is this product, what is that. We're either referring then to Legislator Cooper's Office, because he did extensive research in that. And we're hoping that he has the answer to that. We don't have anybody on staff, myself or anybody else, that can start getting into the technical stuff as far as definitions and what about this product and that product. We're staying out of that.

LEG. LINDSAY:
Well, see that's one the problems with the whole legislation. We don't have the expertise to enforce this legislation. And some of the same people that have contacted my office have contacted Legislator Cooper's Office, and they haven't been getting answers there either.

DIRECTOR GARDNER:
Well, see that part I can't help you on that.

LEG. LINDSAY:
No, I know that. But if you are the enforcement arm -- because we have to give these people some answers.

DIRECTOR GARDNER:
I agree.

LEG. LINDSAY:
You know, so I'll forward the questions to you. I'm sorry to do that to you. But we forwarded them to Health, I thought I was going to get an answer from Health. They never told me they are not the enforcement arm.

DIRECTOR GARDNER:
I'm not speaking for the Health Department, but I think they were in kind of the same boat that we were in that again, the law does not address who is the enforcing agency. And naturally, nobody volunteered to step up to the plate and say, oh, you know, we'll do it. I mean, it just didn't address anybody. It's totally silent.

CHAIRMAN ALDEN:
I want to make more of a record for this, because this has to be passed on to the Presiding Officer's Office, and also Legislative Counsel is going to have to look at this, whether this law needs some revision or whatever has to happen here. But how about your

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resources? You said that it was over a month's worth of man hours.

DIRECTOR GARDNER:
Almost two months.

CHAIRMAN ALDEN:
Two months worth of man hours.

DIRECTOR GARDNER:
Just to make sure -- in other words, we went to as many gyms, health clubs, nutrition stores, drug stores, pharmacies, supermarkets, etcetera, etcetera, etcetera, that we thought probably were selling some of all of the items.

CHAIRMAN ALDEN:
Okay. What paid the price then? You had to divert people from doing regular chores --

DIRECTOR GARDNER:
Basically, I used the Weights and Measures staff, the six fields inspectors from Weights and Measures.

CHAIRMAN ALDEN:
So they --

DIRECTOR GARDNER:
Every day for the last -- well, they will be finishing this evening, so we figure we had six full work days, times six inspectors is 36 work days, there's an average of 20 in a month, so that's where I get the almost two months.

CHAIRMAN ALDEN:
They suspended work on Weights and Measures things to go and do this Ephedrine.

DIRECTOR GARDNER:
That's correct.

CHAIRMAN ALDEN:
That's not a good sign. Legislator Carpenter.

LEG. CARPENTER:
Why did you feel it was necessary to pay a visit to these establishments and not just send a notice?

DIRECTOR GARDNER:
Because when we -- that was our original intent, but when we sat down and tried to develop a mailing list, it was virtually impossible. I mean, it would have taken a week just to try develop mail. We don't have that type of data base.

LEG. CARPENTER:
But obviously you have the information on where these locations are, because how else would the inspectors know where to go? They just get in the car and drive around in case they see something and pop in or they have a list of where they're going?

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DIRECTOR GARDNER:
They basically had a list of types of stores. In other words, all the CVS, all the Genovese Stores, all the Rite Aid, you know, Dwayne Reed, etcetera. But the address, for somebody to, you know, sit down, develop the mailing list for all of these different stores, that would have taken -- we're more -- let's put it like this, we're more pressed in our clerical and administrative duties in the office with licensing and that type of paperwork. We don't have the clerical staff to do that. We don't need to know the mailing address to go to the stores. I mean, it's all done in six days. We'd probably still be developing mailing addresses and mailing that stuff out and then getting the

returns, you know, unable to deliver, etcetera. Any time we do a major mailing --

LEG. CARPENTER:
I quite frankly find that hard to believe, to tell you the truth because -- and I can't imagine that it's more cost effective to put people in vehicles and send them to locations rather than just mail blanket mailing notices to retail establishments in Suffolk County. But be that as it may, it seems to me that you should perhaps look at, and I certainly don't want to, you know, be so presumptuous as to tell you how to run your department or micromanage, but to look at ways of developing that kind of data base. I mean, if nothing else, shouldn't you have a list of where these inspectors have been? Wouldn't they -- if they've been to Union Boulevard and walked in to the Genovese to know that that's 540 Union Boulevard, let's keep a record of where I've been? And you in essence would be developing a data base.

DIRECTOR GARDNER:
We have that now. We have a record of every place that was visited now.

LEG. CARPENTER:
I would say that that information should be captured, so that if something else comes down the pipe, you will have that data base.

DIRECTOR GARDNER:
Yes. It's not something that we ever had to do before, so we didn't have the data base prior.

CHAIRMAN ALDEN:
One problem I can see here is jurisdiction, as far as normally you don't go into health clubs.

DIRECTOR GARDNER:
That's correct.

CHAIRMAN ALDEN:
Right. But the Health Department does. They are all licensed by the Health Department.

DIRECTOR GARDNER:
Yeah. I don't think all of them are.

CHAIRMAN ALDEN:
No?

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DIRECTOR GARDNER:

Gyms?

CHAIRMAN ALDEN:
Right.

DIRECTOR GARDNER:
I don't know.

CHAIRMAN ALDEN:
Some of them sell actually food products that they prepare there. I would think that they have to be licensed to go into that kind of operation, or even to sell -- if they're selling supplements and things of that nature, they're going to need a -- they're going to need a tax ID number, they're going to need a whole bunch of other things too. There's multi-jurisdictional questions here that really weren't taken care of.

LEG. LINDSAY:
The other thing is my recollection correct, but didn't the Health Commissioner come and testify for this legislation?

CHAIRMAN ALDEN:
I believe so, yes.

LEG. LINDSAY:
It's bizarre that they're not claiming jurisdiction.

LEG. NOWICK:
I think you are right about the health clubs. They actually make it a business there. The one I go to in Lake Grove, they rebuilt inside a beautiful store and they sell, besides clothes, all the supplements, they make the drinks, put them in the blender, they sell all that, so there's got to be some type of a license going on.

CHAIRMAN ALDEN:
Also, any time you have showers, and you have a pool or whirlpool and things like that, that's subject to Health Department permits basically. All right. We're making a record. I'm glad you brought it up, because the sponsor of the bill has to be aware that now upon implementation, you know, there's some major problems here. And also, we were all led as Legislators whether we voted for or against the bill, we were led to believe that the Health Department was going to enforce this, not Consumer Affairs, which is already stretched and which has to take away from its job that has been traditionally its job, and that's Weights and Measures. So, you know, to go and add on something new and allow that job not to get done for that period of time, that's not really the way -- I don't -- that this was envisioned to go.

DIRECTOR GARDNER:

We also did a general mailing to all of our corporate addresses that we had. For instance, all the supermarkets, you know, the chain stores, any of the CVS in Rhode Island, etcetera. So any of those main corporate offices we did a mailing to them also.

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CHAIRMAN ALDEN:
You said there was a second thing.

DIRECTOR GARDNER:
The other is that we started the notification process the cash registers and the display of the cash registers. So we've started that, and goes into effects in a month. So we've started mailings for that. Just to let everybody know, again, that very shortly you are going to have, if you don't already have your cash registers set up with a remote display, you are either going to have to get a new system or start using remote displays so that the customers can see the display as the sales are being rung up.

CHAIRMAN ALDEN:
When is the start date on that.

DIRECTOR GARDNER:
That's July.

CHAIRMAN ALDEN:
And it's good just to point out that New York State has passed legislation that did away with our sales tax exemption, and that started June 1st. So starting June 1st, sales tax on everything in Suffolk County is now eight and three quarters, right?

DIRECTOR GARDNER:
Eight and three quarters, I believe it is now.

CHAIRMAN ALDEN:
And that was state action, not Suffolk County Legislative action. We were actually overridden in our attempt at helping the people, the consumer. All right. Any other questions of Charlie?

DIRECTOR GARDNER:
That latest, just in touch with what Kevin described, the latest oil survey was yesterday, so I have the copies of the prices. And also, we're just finishing up the report. Normally that's done by end of March, beginning of April, but for obvious reasons, we're a little bit later this year. But it's just rapping up this week. So probably by the next meeting we will have copies of the 2002 annual report for the office.

CHAIRMAN ALDEN:
Thanks, Charlie. Okay. We stand adjourned. Thank you.

(*THE MEETING WAS ADJOURNED AT 10:35 A.M.*)

{ } DENOTES BEING SPELLED PHONETICALLY

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